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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

SYLVIA SARTIN TORRENCE, individually, and as Legal Guardian for the use and benefit of Minor Daughter Jamira Dariel Torrence, and as the Administratrix at law of the Estate of Deceased Husband, James Dariel Torrence; and NANNIE PETERS, individually, as Legal Guardian of the Minor, Quadarius Rashad Gatlin,
Petitioners,

v.

ORYX ENERGY COMPANY, PETROLEUM ENGINEERS, INC., and BUDDY WEAVER
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT, STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

I. May the United States Court of Appeals for the Fifth Circuit refuse to follow other Courts of Appeals and prior decisions of this Honorable Supreme Court and refuse to recognize that United States Coast Guard regulations impose non-delegable duties and that a violation thereof constitutes *negligence per se* on the part the owner of an oil drilling platform and the independent contractor hired to safely operate it?

PARTIES TO THE PROCEEDING

Petitioners

SYLVIA SARTIN TORRENCE, individually, and as Legal Guardian for the use and benefit of Minor Daughter Jamira Dariel Torrence, and as the Administratrix at law of the Estate of Deceased Husband, James Dariel Torrence; and NANNIE PETERS, individually, as Legal Guardian of the Minor, Quadarius Rashad Gatlin. Petitioners are individuals and have no corporate affiliations.

Respondents

Oryx Energy Company, W. S. Weaver, Buddy; Signa Engineering Corporation.

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OPINIONS BELOW

On the 8th day of July, 1999, the United States District Court for the Eastern District of Louisiana, The Honorable Ginger Berrigan, granted motions for summary judgment filed by W.S. "Buddy" Weaver, Oryx Energy Company and Signa Engineering Corporation and issued a judgment and reasons therefor. *Appendix,* pp. 3a-12a. The Plaintiffs herein, Sylvia Torrence, individually and as the legal guardian for the use and benefit of the minor daughter, Jamira Dariel Torrence, and as administratrix at law of the estate of her deceased husband, James Daniel Torrence, and Nannie Peters, individually and as legal guardian of the minor child, Guadarius Rashad Gatlin, appealed from that ruling. On May 5, 2000, the United States Court of Appeals for the Fifth Circuit affirmed the district court's ruling. *Appendix,* p. la-2a. The decision of the United States Court of Appeals for the Fifth Circuit is unpublished.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its Opinion on May 5, 2000. This Petition for Writ of Certiorari is filed within the prescribed period of ninety (90) days after May 5, 2000. The jurisdiction of this Honorable Court is invoked under the provisions of 28 U.S.C. §§ 1254 (1) and 2106.

STATUTORY AND REGULATORY PROVISIONS

This case involves regulations set forth in 33 C.F.R. Parts 142 and 143 (June 20, 2000), specifically: 33 C.F.R. § 142.4(a) and (b) (June 20, 2000); and 33 C.F.R. § 143.1110

(a) (June 20, 2000). These authorities are reprinted in pertinent part in the *Appendix,* at pp. 13a-15a. This case also involves the Outer Continental Shelf Lands Act, 43 U.S.C. §§ 1331, *et seq.* Specifically, this case involves 43 U.S.C. § 1333 (d). This section, 1333 (d), is reprinted in the *Appendix,* at pp. 16a-20a

STATEMENT OF THE CASE

The petitioner, Sylvia Torrence, is the wife of the decedent, James Daniel Torrence, the administratrix at law of his estate, and the mother their minor child, Jamira Dariel Torrence. The petitioner, Nannie Peters, is the legal guardian of James Daniel Torrence's minor child, Rashad Gatlin. Petitioners have sued Oryx Energy Company, the owner of the offshore fixed platform, the High Island A 385 D, Signa Engineering Corp., an independent contractor hired to operate the High Island A 385 D, and W.S. "Buddy" Weaver, Oryx's "company man" on the High Island A 385 D.

On January 3, 1997 at approximately 6:30 a.m., James Dariel Torrence was working aboard Oryx's platform, in an area surrounding Pool Company's drilling rig. The drilling rig had been placed on the High Island rig in such a fashion as to require the removal of the safety rails which protected the occupants of Oryx's platform from falling into the Gulf of Mexico. Because of the drilling rig's placement, the safety rails were removed and the drilling rig's mud tanks extended over the sea. Replacement handrails had not been prefabricated, and there were no replacements on the rig or platform. The placement of the drilling rig and the removal of Oryx's railing were done in accordance with a schematic blue print which Pool submitted to Oryx and/or Signa Engineering Corp. (*Appendix,* 2la.).

Pool, through its employee Henry Loomis, ordered James Torrence to span the open spaces created by the placement of its drilling rig. Rather than utilize the federally mandated hand rails or wire mesh fencing, Pool ordered Torrence to use rope. Subsequently, Torrence fell some eighty feet into the waters of the Gulf of Mexico and his body was never recovered. The United States Coast Guard issued a presumptive death certificate and predicated thereon, the State of Mississippi issued a death certificate.

REASONS FOR GRANTING THE WRIT

I. THE DECISIONS OF THE COURTS BELOW HAVE CREATED AN IMPERMISSIBLE CONFLICT AMONG THE CIRCUITS AND WITH PREVAILING FEDERAL LAW. AS A MATTER OF FEDERAL AND TEXAS LAW, REGULATIONS AS SET FORTH BY THE UNITED STATES COAST GUARD IMPOSE NON-DELEGABLE DUTIES AND VIOLATIONS THEREOF CONSTITUTE NEGLIGENCE *PER SE*.

This Honorable Supreme Court, and several of the Courts of Appeal, have held without equivocation that a violation of a United States Coast Guard regulation, set forth in the Code of Federal Regulations, constitutes negligence *per se*. *See, e.g. The Pennsylvania,* 86 U.S. 125, 19 Wall. 125, 22 L.Ed. 148 (1874); *Kernan v. American Dredging Co.*, 355 U.S. 426, 78 S.Ct. 394, 2 L.Ed.2d 382 (1958); *Jones v. Spentonbush-Red Star Co.*, 155 F.2d 587 (2d Cir. 1998); *Duty v. East Coast Tender Service, Inc,* 660 F.2d 933 (4th Cir. 1981); *Reyes v. Vantage S.S. Co.*, 609 F.2d 140 (5th Cir.

1996); and *Fuszek v. Royal King Fisheries, Inc.*, 98 F.3d 514 (9th Cir. 1996). The decisions of the courts herein below have cut against the grain of this precedent, to the detriment of petitioners and an entire class of workers who are specifically protected by Coast Guard regulation.

The United States Coast Guard is vested with the authority to enforce worker safety regulations on fixed platforms on the Outer Continental Shelf. *Herb's Welding, Inc. v. Gray,* 105 S.Ct. 1421, 1435, 470 U.S. 414, 438 (1985). This appointment indicates Congress' intent to recognize that the conditions and hazards faced by those who do business *on* great waters are very similar to the perils faced by those who do business *in* great waters. *Id.*, 105 S.Ct. 1435, 470 U.S. 438. In the very words of this Honorable Supreme Court, "[t]hus Congress and the Coast Guard have recognized that the offshore locality of platform workers' work significantly affects their working conditions." *Id.*

"The failure to follow any Coast Guard regulation which is the cause of an injury establishes negligence *per se*." *Daugherty v. Santa Fe Marine, Inc.*, 698 F.2d 232, 235 (5th Cir. 1983) (citing *Kernan v. American Dredging Co.*, 355 U.S. 426, 438-39, 78 S.Ct. 394, 401, 2 L.Ed.2d 382 (1958; *Reyes v. Vantage S.S. Co.*, 609 F.2d 140, 143 (5th Cir. 1980)). These safety regulations create a non-delegable duty on the part of the platform owner and operator. *Evans v. Chevron Oil Co.*, 438 F.Supp. 1097 (E.D. La. 1977) (citing *Armstrong v. Chambers & Kennedy,* 340 F.Supp. 1220 (S.D. Tex. 1972); and *In re Dearborn Marine Service, Inc.*, 499 F.2d 263 (5th Cir. 1974)).

The two courts below, the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Eastern District of Louisiana, wrongfully failed

to find Oryx Energy Company, Signa and W.S. "Buddy" Weaver negligent for the violation of two specific Coast Guard regulations. This failure has deprived an innocent oil worker of civil remedies against those parties upon whom the burden of offshore safety should rest.

Oryx Energy Company (hereinafter referred to as "Oryx") was the mineral lessee and owner of the High Island A 385 D fixed platform. Oryx hired Torrence's employer, Pool Company (hereinafter "Pool"), as an independent contractor, to operate Pool's drilling rig, which was to be placed on the Oryx platform. (R. Vol. 4, p. 965, par. 10.). Signa Engineering Corporation ("Signa"), another independent contractor, hired W.S. "Buddy" Weaver, again, an independent contractor, to act as the drilling consultant.

The Code of Federal Regulations, 33 C.F.R. § 142.4 (June 20, 2000), set forth that:

> (a) Each holder of a lease or permit under the Act shall ensure that all places of employment within the lease area or with the area covered by the permit on the OCS are maintained in compliance with workplace safety and health regulations of this part and, in addition, free from recognized hazards.
>
> (b) Persons responsible for actual operations, including owners, operators, contractors, and subcontractors, shall ensure that those operations subject to their control are conducted in compliance with workplace safety and health regulations of this part and, in addition, free from recognized hazards.

As 33 C.F.R. § 142.4 (b) states, the owner of the High Island A 385 D, Oryx, and its operators and subcontractors, Signa, Pool and Buddy Weaver were required to "[. . .] ensure that those operations subject to their control [were] conducted in compliance with workplace safety and health regulations of this part [. . .]." 33 C.F.R. § 142.4 (b) (June 20, 2000). 33 C.F.R. § 143.110 (a) (June 20, 2000) mandates that:

> (a) [. . .] the unprotected perimeter of all floor or deck areas and openings shall be rimmed with guards and rails or wire mesh fence. The guard rail or fence shall be at least 42 inches high. The two intermediate rails shall be so placed that the rails are approximately evenly spaced between the guard rail and the floor or deck area: [. . .].

Every entity on the High Island rig, whether corporate or company man, was responsible for worker safety. 33 C.F.R. § 142.4 (b) (June 20, 2000) The decisions of the lower courts herein have confused prior federal jurisprudence, threaten to eviscerate the effect of Coast Guard regulation and have subjected maritime oil field workers to a situation wherein platform owners and operators have no economic incentive, in the form of exposure to potential civil liability, to meet their obligations under federal law.

The federal regulations recited above, ones which could have prevented Torrence's death, were promulgated by the Secretary of the Department of Transportation, the Department under which the Coast Guard currently operates

and operated at the time of Torrence's death[1]. They apply, as noted above, pursuant to an act of Congress, the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, *et seq.* (West 2000). Specifically, 43 U.S.C. § 1333 (d), states that:

> (d) Coast Guard regulations; marking of artificial islands, installations, and other devices; failure of owner suitably to mark according to regulations
>
> (1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.
>
> (2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) of this section wherever the owner has failed suitably to mark such island,

---

[1] The United States Coast Guard, a branch of the armed forces of the United States, operates under the Secretary of the Department of Transportation, 49 U.S.C. § 108(a)(1), except in time of war, or when the President otherwise directs, when it operates under the Secretary of the Navy. 14 U.S.C. § 3.

> installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking.

The lower courts have somehow determined that 33 C.F.R. § 142.4 and 143.110 were promulgated by the Mineral Management Service, an agency of the United States government which operates under the Department of the Interior. *See, e.g., Dupre v. Chevron U.S.A., Inc.*, 109 F.3d 230 (5th Cir. 1997). This is simply not the case. The aforementioned regulations are promulgated by the Secretary of the Department of Transportation. They are Coast Guard regulations, the violation of which, as has been previously argued, constitutes negligence *per se*. They impose non-delegable duties. To hold otherwise undercuts the Coast Guard's authority to regulate safety in the oil field and degrades the primacy of place given that agency by Congress and recognized by this Honorable Supreme Court. *See,* 43 U.S.C. § 1333 (d) (West 2000); *see, also, Herb's Welding, Inc. v. Gray, supra.*

The courts below completely ignored the non-delegable nature of defendants' burdens as established by the Coast Guard regulations. In a case heavily relied upon below to Torrence's detriment, a case factually on point with this one, it was held by the United States Court of Appeals for the Fifth Circuit that its prior decisions in *Olsen v. Shell Oil Company,* 561 F.2d 1178 (5th Cir. 1977), *cert. denied*, 444 U.S. 979, 100 S.Ct. 480, 62 L.Ed.2d 405 (1979) (referred to hereinafter as *Olsen), Bourg v. Texaco Oil Company, Inc.*, 578 F.2d 1117, 1121 (5th Cir. 1978) (referred to hereinafter as *Bourg*), and *Romero v. Mobil Exploration & Producing North America, Inc.*, 939 F.2d 307 (5th Cir. 1991) (referred to hereinafter as *Romero)* prevent the finding of liability pursuant to 33 C.F.R. §§ 142.4 and 143.110. *Dupre,* 109

F.3d at 231 (5th Cir. 1997). None of those cases, relied upon by the Fifth Circuit in *Dupre,* and herein, were concerned with Coast Guard regulations.

Romero, 939 F.2d 307 (5th Cir. 1991), involved the application of two Mineral Management Service regulations: 30 C.F.R. § 250.50 and 30 C.F.R. § 250.56 (d) (3). *Id.,* 939 F.2d at 308-09 & nn 2-3. *Bourg,* 578 F.2d 1117 (5th Cir. 1978), addressed 30 C.F.R. § 250.45 and 30 C.F.R. § 250.46. *Id.,* 578 F.2d at 1119. *Olsen,* 561 F.2d 1178 (5th Cir. 1977), involved 30 C.F.R. § 250.30, 30 C.F.R. § 250.45, and 30 C.F.R. § 250.46. *Id.,* 561 F.2d at 1182. Again, these three cases involved regulations put forth by the Mineral Management Service and Secretary of the Interior. They do not touch on the application of Coast Guard regulations, which are set down upon the oil platforms by Congress through the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333 (d).

The opposition to this argument is that if Mineral Management Service regulations do not give rise to liability, and if, as established in *Clary v. Ocean Drilling and Exploration Company,* 609 F.2d 1120 (5th Cir. 1980), and *in Mallard Bay Drilling, Inc. v. Herman,* 212 F.3d 898 (5th Cir. 2000), Occupational Safety and Health Administration regulations do not either, then Coast Guard regulations should not be any different. This ignores, however, the traditional and unique importance given to Coast Guard regulations in the maritime law, *see, e.g., Herb's Welding, Inc. v. Gray, supra.*

The ultimate issue herein is, finally, whether or not a violation of a Coast Guard regulation constitutes a non-delegable duty upon Oryx, Signa and "Buddy" Weaver under Texas law. Texas law applies to this case as Texas is the

riparian state closest to the platform. *Rodrigue v. Aetna Casualty & Surety Co.*, 395 U.S. 352, 89 S.Ct. 1835, 23 L.Ed.2d 360 (1969). It is applicant's contention that Defendants' violation of 33 C.F.R. § § 142.4 (b) and 143.110 (a) constitute negligence *per se* under Texas law and that the duties imposed by these Coast Guard regulations were, and are, non-delegable.

Under Texas law, "[t]he unexcused violation of a statute setting an applicable standard of care constitutes negligence as a matter of law is the statute is designed to prevent an injury in that class of persons to which the injured party belongs. *El Chico Corporation v. Poole,* 732 S.W.2d 306, 312 (Tex. 1987). Further, a duty imposed on a party by law cannot be delegated to an independent contractor. *Mbank El Paso, N.A.v. Sanchez,* 836 S.W.2d 151, 153 (Tex. 1992) (citing *Restatement (Second) of Torts* § 424 (1965)). It is obvious that the pertinent Coast Guard regulations at issue herein are specifically designed to protect oil platform workers such as Torrence from the very hazards which claimed his life. Thus, under federal and Texas law, Defendants should not have been able to shift their responsibilities for worker safety onto Pool.

CONCLUSION

The lower courts committed manifest legal error in entering judgment against Petitioner. The petitioners, Sylvia Torrence and Nannie Peters, respectfully ask that this Honorable Supreme Court accept this matter for review and address the actions taken by the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Eastern District of Louisiana. An established rule of law, that Coast Guard regulations create non-delegable

duties, has been ignored. The effect of this error is to allow those parties vested with the responsibility for worker safety to escape liability for the deaths and injuries of those workers the Coast Guard is specifically charged with protecting.

Respectfully Submitted,

WIEDEMANN & WIEDEMANN

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 99-30793

[Filed: May 5, 2000]

SYLVIA SARTIN TORRENCE, individually and as legal guardian for the use and benefit of minor daughter, Jamira Dariel Torrence, and as administratix of law of the estate of deceased husband, James Dariel Torrence; NANNIE PETERS, individually, and as legal guardian of the minor, Guadarius Rashad Gatlin,
Plaintiffs-Appellants,

v.

ORYX ENERGY COMPANY; ET AL.,
Defendants,

ORYX ENERGY COMPANY; W.S. WEAVER, Buddy; SIGNA ENGINEERING CORPORATION,
Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana
(97-CV-3242-C)

Before REAVLEY, DAVIS and BARKSDALE, Circuit Judges.

PER CURIAM:*

The judgment of the district court is affirmed essentially for the reasons stated in its thorough Order and Reasons of July 8, 1999.

AFFIRMED.

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

APPENDIX B

UNITED STATES DISTRICT COURT
E.D., LOUISIANA

No. Civ. A. 97-3242

[Filed: July 8, 1999]

SYLVIA SARTIN TORRENCE, individually, and as Legal Guardian for the use and Benefit of Minor Daughter, Jamira Dariel Torrence, and as Administratix at Law of the Estate of Deceased Husband, James Dariel Torrence; and NANNIE PETERS, individually, as Legal Guardian of the Minor, Quadrius Rashad Gatlin,
Plaintiffs,

v.

ORYX ENERGY COMPANY, Petroleum Engineers, Inc., and Buddy Weaver,
Defendants.

ORDER AND REASONS[1]

BERRIGAN J.

This matter is before the court on renewed motions for summary judgment filed by defendants Oryx Energy Company ("Oryx"), Signa Engineering Corp. ("Signa"), and Buddy Weaver ("Weaver"). The motions were originally denied because plaintiffs' discovery was unfinished. Upon completion of discovery, the renewed motions were submitted on the briefs. Having considered the record, the memoranda of counsel and the law, the Court has determined that both motions should be GRANTED for the following reasons.

BACKGROUND

Oryx contracted with Pool Company ("Pool") to perform workover drilling services on the Oryx fixed platform located in Block 385 of the High Island Area of the Gulf of Mexico. Pool acted as an independent contractor and thus was responsible for all operational details of the drilling work consistent with the agreement. On January 3, 1997 at approximately 6:30 a.m., James Daniel Torrence ("Torrence"), a Pool employee, allegedly fell from the Oryx platform and apparently drowned.

The night prior to Torrence's accident, Pool had removed a portion of the handrails in order to load the drilling unit and mud pumps onto the platform. The result was a

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[1] Nancy J. Kim, a second year law student at Tulane Law School, assisted in the research and preparation of this decision.

temporary gap in the platform handrails. According to Harry Loomis ("Loomis"), a Pool driller's Unsworn Declaration Declaration under Penalty of Perjury,[2] the following *morning* he ordered Torrence to rope off the gap until permanent handrails could be installed. Further, Loomis testified that he had cautioned Torrence about the dangers associated with the gap.

At the time of the accident, there were no other Oryx employees on the platform. However, Oryx had hired a Sigma employee, Buddy Weaver ("Weaver"), to act as a drilling consultant. While the contract does not specify Weaver's duties, Oryx argued that he was hired as an independent contractor and had no authority to direct or interfere with the work being done by Pool.[3] Loomis and another Pool employee, Clarence Kelly, Sr. ("Kelly") confirm Oryx's statement in their depositions.[4] In addition, Weaver stated in his deposition that he was unaware that the handrails were being removed by Torrence and did not know that Torrence would be working without a harness or lanyard.

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[2] Counsel for Oryx advised that Loomis' deposition would be filed with the court, but at the time of this order it has not yet been filed. Counsel has assured that Loomis confirmed all of his statements in the Unsworn Declaration in his deposition.

[3] The Pool-Oryx contract specified that Pool had sole control over all operational functions.

[4] Loomis and Kelly testified that Weaver was not involved in the removal of the handrails nor did he have the authority to instruct or direct Pool employees.

Plaintiffs filed a suit against Oryx, Weaver, and Petroleum Engineers, Inc. ("Petroleum") for negligence in the Civil District for the Parish of Orleans, Petroleum was eventually dismissed and plaintiffs amended their petition to include defendant Signa. The suit was removed to this Court based on federal jurisdiction under 28 U.S.C. § 1331 applying the Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(a)(2).

DISCUSSION

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the mover is entitled to summary judgment as a matter of law." Fed.R.Civ. Proc. 56(c). *See Celotex v. Catrett*, 477 U.S. 317, 322 (1986). The burden is on the moving party to show the absence of genuine issues as to any material fact with the opposing party viewed in a most favorable light. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970). A genuine issue of material fact exists only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 1986). Once the movant meets its burden, the non-movant can oppose the motion by setting forth specific facts showing that there is a genuine issue of material fact. *Celotex*, 477 U.S. at 321-22.

As Oryx's platform was located on the Outer Continental Shelf off the coast of Texas, the Outer Continental Shelf Lands Act. 43 U.S.C. § 1333 requires the use of Texas substantive law. In order to prove a claim in negligence, the claimant must show that defendants owed

them a legal duty which was breached and caused actual damage, *Williams v. Olive*, 912 S.W.2d 319, 327. (Tex. Ct. App. 1995) (overruled on other grounds) (citing *El Chico Corp. v. Peele*, 732 S.W.2d 306, 311 (Tex. 1987)). In Oryx's motion for summary judgment, they allege that they had no legal duty to protect the employees of the independent contractor particularly if the accident arose from an act by the independent contractor. Weaver and Signa make a similar argument in their motion.[5] "The general rule is that an employer or conic is not liable for the torts of an independent contractor or of the latter's servants." *Gaspard v. Cox*, 583 S.W.2d 877, 878. (Tex. Civ. App. 1979) (citing *Cameron Mill & Elevator Co. v. Anderson*, 81 S.W. 282 (1904)). Therefore the independent contractor, not the owner or occupier of the premises, is liable to its employees for injuries sustained while performing the contractor's work. *Id.*

There are exceptions to the general rule imposing liability on the independent contractor. One exception noted in the defendants' summary judgment motion is when the general contractor or principal retains or exercises operational control over the details of the independent contractor's work. *Williams v. Olivo*, 912 S.W.2d 319, 328 (Tex. Ct. App.1995); *See also Bryant v. Gulf Oil Corp.*, 694 S.W. 2d 443,4 47 (Tex.App. 7th Dist. 1985). The type of control required of the general contractor must be more than a "general right to order the work to start or stop, to inspect progress, or receive reports." *Williams v. Olive*, 912 S.W.2d

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[5] Weaver and Signa erroneously applied Louisiana law in their motion, but their argument is supported by Texas law cited in Oryx's motion for summary judgment.

at 328; *See also Restatement (Second) of Torts § 414*. When the general contractor controls any aspect of the work, he becomes subject to liability for harm to those individuals whose safety he now owes a duty to exercise reasonable care. *Id.*

Another exception highlighted by Oryx is based in premises liability. An occupier of land owes a duty of ordinary care to an invitee such that the occupier maintain the premises in a reasonably safe condition or to warn the invitee of any dangerous condition which the occupier knows or should have known about and which are not reasonably apparent to the invitee. *Bryant v. Gulf Oil Corp.*, 694 S.W.2d 443, 445 (Tex.App, 7th Dist.1985). However, the owner or occupier of the premises are generally not required to ensure that the independent contractor perform its work in a safe manner. *Williams v. Olive*, 912 S.W.2d at 328 (citing *Redinger v. Living, Inc.*, 689 S.W.2d 415, 417 (Tex.1985); *See also Bryant v. Gulf Oil Corp.*, 694 S.W. 2d 443,445 (Tex.App. 7th Dist. 1985). There is no affirmative duty to ensure that the independent contractor is working safely especially if the independent contractor is creating the dangerous situation. *Bryant*, 694 S.W.2d at 446.

The evidence establishes that both Signa and Pool were independent contractors. As for the exceptions to the general rule that a party is not liable for the possible torts of an independent contractor, neither Oryx nor Signa falls into either of the noted exceptions. First, the Pool-Oryx contract as stated before specified that Oryx would not have operational control of Pool's work. Moreover, the undisputed evidence indicates that neither Oryx nor Signa in fact exercised any such control. The depositions of Loomis, Kelly,

and Buddy Weaver ("Weaver") established that Pool had exclusive control of the method and equipment involved in the work and of giving direction and supervision to its employees.

There are exceptions to the general role imposing liability on the independent contractor. One exception noted in the defendants' summary judgment motion is when the general contractor or principal retains or exercises operational control over the details of the independent contractor's work. *Williams v. Olivo*, 912 S.W.2d 319, 328 (Tex.Ct.App. 1995); *See also Bryant v. Gulf Oil Corp.*, 694 S.W.2d 443, 447 (Tex.App. 7th Dist. 1985). The type of control required of the general contractor must be more than a "general right to order the work to start or top, to inspect progress, or receive reports." *Williams v. Olivo*, 912 S.W.2d at 328; *See also* Restatement (Second) of Torts § 414. When the general contractor controls any aspect of the work, he becomes subject to liability for harm to those individuals whose safety he now owes a duty to exercise reasonable care. *Id.*

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Second, the argument for premises liability also fails as neither Oryx nor Weaver had control of the area with the missing handrail and were not aware that Pool removed the handrails. Weaver testified without contradiction that he never instructed or supervised Torrence or any other Pool employee. Without knowledge of the hazard and control of the work being done on the premises, Oryx cannot be held liable for the ensuing harm. Additionally, Weaver and Signa, did not have an affirmative duty to intervene and assist Pool or its employees. *Bryant v. Golf Oil Corp.*, 694 S.W.2d 443, 446 (Tex. App. 7th Dist. 1985).[6]

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[6] As the evidence indicates that Weaver did not exercise any operational control over Pool, a discussion of whether or not

Plaintiffs also argue that Oryx and Signa had an independent individual duty of care under the OSHA and Coast Guard regulations: "Owners, operators, contractors, and subcontractors" owe independent duties to ensure workplace safety including harm from "recognized hazards" such as missing handrails. 33 C.F.R. § 142.4.[7] In particular, they argued that Weaver, Signa, and Oryx knew more than seven months prior to the accident that Pool intended to remove the handrails in order to load the equipment onto the platform. Because none of the defendants took any action to ensure that the work areas would be safe from "recognized

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he acted as a "company man" for Oryx is unnecessary. Also, plaintiffs' argument that Weaver had discussed safety issues with workers and that Weaver had the same duties as an Oryx employee man is insufficient to establish that these acts transformed Weaver into an Oryx employee.

[7] Sec. 142.2 Duties of lessees, permitees, and persons responsible for actual operations: (a) Each holder of a lease or permit under the Act shall ensure that all places of employment within the lease area or within the area covered by the permit on the OCS are maintained in compliance with workplace safety and health regulations of this part and, in addition, free from recognized hazards; (b) Persons responsible for actual operations, including owners, operators, contractors, and subcontractor, shall ensure that those operations subject to their control are conducted in compliance with workplace safety and health regulations of this part and, in addition, free from recognized hazards; (c) "Recognized hazards," in paragraphs (a) and (b) of this section, means condition which are: (1) Generally known among persons in the affected industry as causing or likely to cause death or serious physical harm to persons exposed to those conditions; and (2) Routinely controlled in the affected industry.

hazards," plaintiffs contend they violated the Coast Guard and OSHA statutes.

Oryx oppose plaintiffs' argument on the grounds that controlling case now has established that the issuance of regulations by the U.S. Department of Interior (MMS) and the Coast Guard preempts and displaces any OSHA regulations. *Clary v. Ocean Drilling and Exploration, Co.*, 609 F.2d 1120 (5th Cir. 1980); *See also Marshall v. Nichols*, 486 F.Supp 615 (E.D.Tx. 1980). More importantly, the Fifth Circuit held in *Dupre v. Chevron U.S.A., Inc.*, that any claim based on the Code of Federal Regulations does not create an implied cause of action nor an independent duty on the platform owner such as Oryx. 109 F.3d 230 (5th Cir. 1997).

The plaintiffs' argument that *Dupre* is inapplicable because of minor factual differences is unpersuasive. Plaintiffs' contention that the handrails were in the sphere of overall operation of all the defendants does not successfully shift liability to the defendants. The evidence revealed that the defendants were not in operational control of the handrail removal process. By contrast, Pool was in complete control of the area in question at the relevant time.

CONCLUSION

The movants Oryx, Signs, and Weaver have established that there is no genuine issue of material fact and that they are entitled to judgment as a matter of law. The motions for summary judgment are GRANTED.

APPENDIX C

CODE OF FEDERAL REGULATIONS

TITLE 33 — NAVIGATION AND NAVIGABLE WATERS
CHAPTER 1 — COAST GUARD, DEPARTMENT OF TRANSPORTATION
SUBCHAPTER N — OUTER CONTINENTAL SHELF ACTIVITIES
PART 142 — WORKPLACE SAFETY AND HEALTH
SUBPART A — GENERAL

Current through June 20, 20000; 65 FR 38332

§ 142.4 Duties of lessees, permittees, and persons responsible for actual operations.

(a) Each holder of a lease or permit under the Act shall ensure that all places of employment within the lease area or within the area covered by the permit on the OCS are maintained in compliance with workplace safety and health regulations of this part and, in addition, free from recognized hazards.

(b) Persons responsible for actual operations, including owners, operators, contractors, and subcontractors, shall ensure that those operations subject to their control are conducted in compliance with workplace safety and health regulations of this part and, in addition, free from recognized hazards.

(c) "Recognized hazards", in paragraph (a) and (b) of this section, means conditions which are —

(1) Generally known among persons in the affected industry as causing or likely to cause death or serious physical harm to persons exposed to those conditions; and

(2) Routinely controlled in the affected industry.

33 CFR § 142.4 and 33 CFR § 143.110

TITLE 33 — NAVIGATION AND NAVIGABLE WATERS
CHAPTER 1 — COAST GUARD, DEPARTMENT OF TRANSPORTATION
SUBCHAPTER N — OUTER CONTINENTAL SHELF ACTIVITIES
PART 143 — DESIGN AND EQUIPMENT
SUBPART B — OCS FACILITIES

§ 143.110 Guards and rails.

(a) Except for helicopter landing decks which are provided for in paragraph (b) of this section, and areas not normally occupied, the unprotected perimeter of all floor or deck areas and openings shall be rimmed with guards and rails or wire mesh fence. The guard rail or fence shall be at least 42 inches high. The two intermediate rails shall be so placed that the rails are approximately evenly spaced between the guard rail and the floor or deck area: Provided, That if a toe board is installed then one of the intermediate rails may be omitted and the other rail placed approximately half way between the top of the toe board and the top guard rail.

(b) The unprotected perimeter of the helicopter landing deck shall be protected with a device of sufficient strength and size as to prevent any person from falling from such deck.

(c) Each catwalk and each stairway shall be provided with a suitable guard rail or rails, as necessary.

APPENDIX D

UNITED STATES CODE ANNOTATED
TITLE 43. PUBLIC LANDS
CHAPTER 29 — SUBMERGED LANDS
SUBCHAPTER III — OUTER CONTINENTAL SHELF LANDS

Current through P.L. 106-170, approved 12-17-99

§ 1333. Laws and regulations governing lands

(a) Constitution and United States laws; laws of adjacent States; publication of projected State lines; international boundary disputes; restriction on State taxation and jurisdiction

(1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: Provided, however, That mineral leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this subchapter.

(2)(A) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State, now in effect or hereafter adopted, amended, or repealed are hereby declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States. State taxation laws shall not apply to the outer Continental Shelf.

(B) Within one year after September 18, 1978, the President shall establish procedures for setting any outstanding international boundary dispute respecting the outer Continental Shelf.

(3) The provisions of this section for adoption of State law as the law of the United States shall never be interpreted as a basis for claiming any interest in or jurisdiction on behalf of any State for any purpose over the seabed and subsoil of the outer Continental Shelf, or the property and natural resources thereof or the revenues therefrom.

(b) Longshore and Harbor Workers' Compensation Act applicable; definitions

With respect to disability or death of an employee resulting from any injury occurring as the result of operations conducted on the outer Continental Shelf for the purpose of exploring for, developing, removing, or transporting by pipeline the natural resources, or involving rights to the natural resources of the subsoil and seabed of the outer Continental Shelf, compensations shall be payable under the provisions of the Longshore and harbor Workers' Compensation Act [33 U.S.C.A. § 901 et seq.]. For the purposes of the extension of the provisions of the Longshore and Harbor Workers' Compensation Act under this section —

(1) the term "employee" does not include a master or member of a crew of any vessel, or an officer or employee of the United States or any agency thereof or of any State or foreign government, or of any political subdivision thereof;

(2) the term "employer" means an employer any of whose employees are employed in such operations; and

(3) the term "United States" when used in a geographical sense includes the outer Continental Shelf and artificial islands and fixed structures thereon.

(c) National Labor Relations Act applicable

For the purposes of the National Labor Relations Act, as amended [29 U.S.C.A. § 151 et seq.], any unfair labor practice, as defined in such Act, occurring upon any artificial island, installation, or other device referred to in subsection (a) of this section shall be deemed to have occurred within the judicial district of the State, the laws of which apply to such artificial island, installation, or other device pursuant to such

subsection, except that until the President determines the areas within which such State laws are applicable, the judicial district shall be that of the state nearest the place of location of such artificial island, installation, or other device.

(d) Coast Guard regulations; marking of artificial islands, installations, and other devices; failure of owner suitably to mark according to regulations

(1) The Secretary of the Department in which the Coast Guard is operating shall have authority to promulgate and enforce such reasonable regulations with respect to lights and other warning devices, safety equipment, and other matters relating to the promotion of safety of life and property on the artificial islands, installations, and other devices referred to in subsection (a) of this section or on the waters adjacent thereto, as he may deem necessary.

(2) The Secretary of the Department in which the Coast Guard is operating may mark for the protection of navigation any artificial island, installation, or other device referred to in subsection (a) of this section whenever the owner has failed suitably to mark such island, installation, or other device in accordance with regulations issued under this subchapter, and the owner shall pay the cost of such marking.

(e) Authority of Secretary of the Army to prevent obstruction to navigation

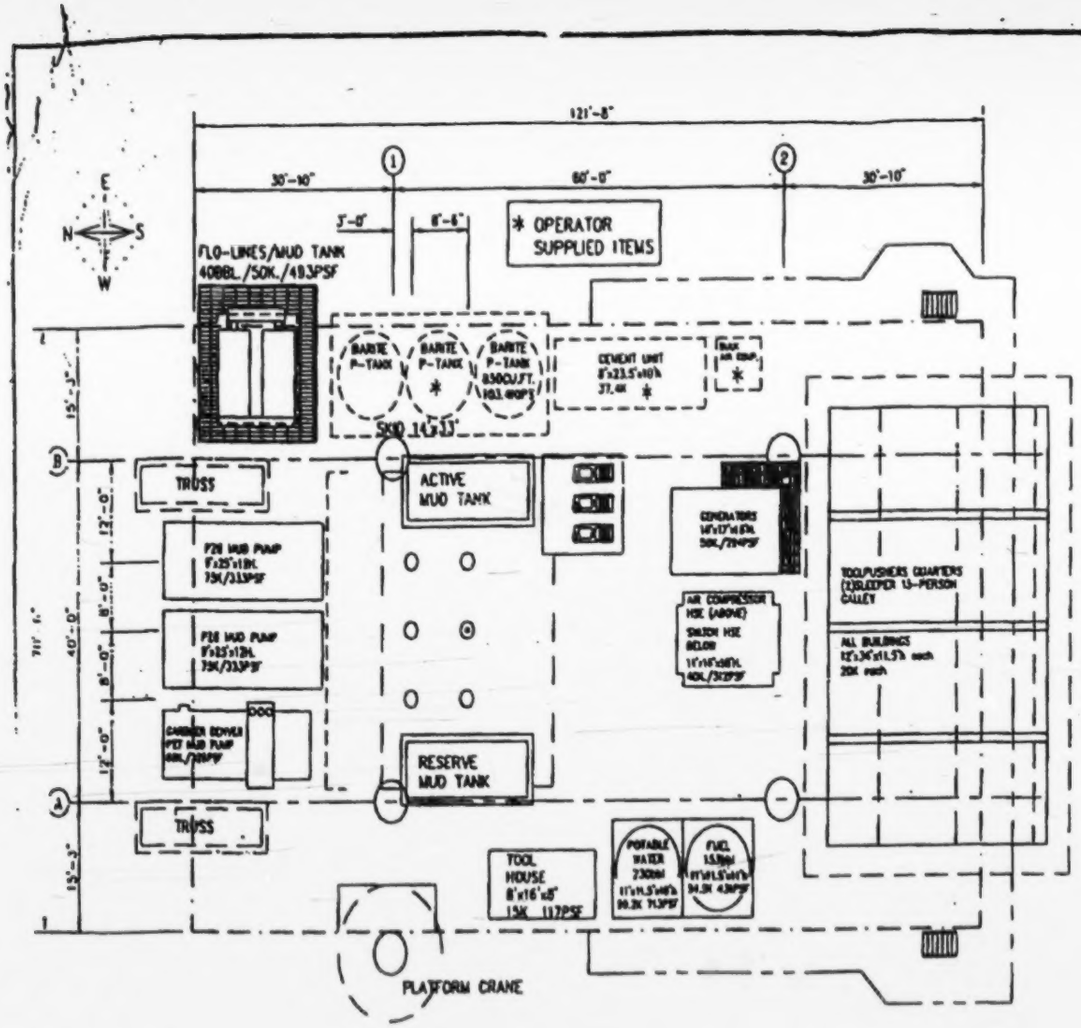
The authority of the Secretary of the Army to prevent obstruction to navigation in the navigable waters of the United States is hereby extended to the artificial islands, installations, and other devices referred to in subsection (a) of this section.

(f) Provisions as nonexclusive

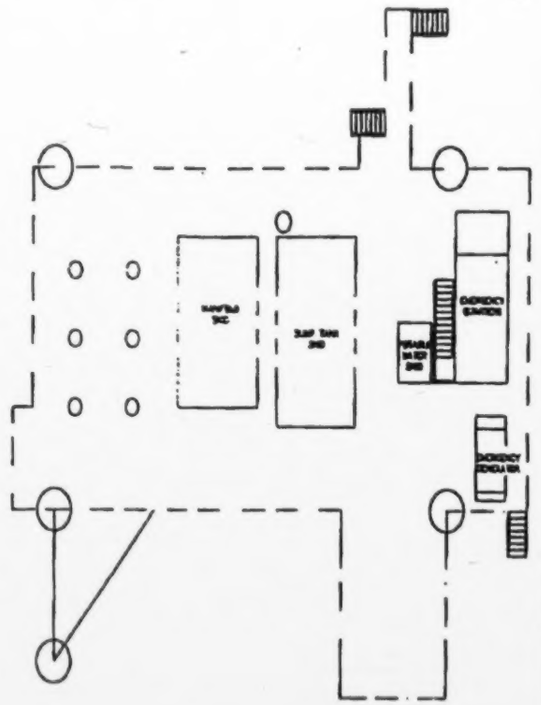
The specific application by this section of certain provisions of law to the subsoil and seabed of the outer Continental Shelf and the artificial islands, installations, and other devices referred to in subsection (a) of this section or to acts or offenses occurring or committed thereon shall not give rise to any inference that the application to such islands and structures, acts, or offenses of any other provision of law is not intended.

APPENDIX E

DIAGRAM OF PLAN AND PRODUCTION DECK



PLAN @ MAIN DECK



PLAN @ PRODUCTION DECK

NO.	REVISION	MADE	DATE

ORYX

POOL COMPANY
GULF OFFSHORE OPERATIONS
HARVEY, LOUISIANA

SCALE	1/16"=1'-0"
DRAWN BY	RT
PLOT DATE	5/7/99
APPD BY	

Rig 143
Platform Arrangement
Plan @ Main Deck
High Island 385 "D"

DRAWING no. Proposal 1186B SHT 2 OF 2